

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
ENVIRONMENTAL APPEALS BOARD**

*In re Department of Natural Resources and  
Environmental Control Issuance of Delaware  
Recyclable Products, Inc. Landfill Minor Permit  
Modification – DRPI Solid Waste Permit SW-15/02*

Order No. 2026-WH-0007

**NOTICE AND STATEMENT OF APPEAL TO ENVIRONMENTAL APPEALS BOARD**  
**(MODIFIED PERMIT)**

2. The DRPI Landfill is the only privately owned landfill currently operating in the State of the Delaware.<sup>1</sup> and has been operated by DRPI since 1999, almost 30 years. The Modified Permit that is the subject of this Appeal, and the Order that is the subject of a contemporaneous Appeal, are largely the result of evolving policies and practices of the Department inconsistently applied and communicated to DRPI, which have in many instances led to insurmountable challenges by DRPI in attempting to comply with the Department's evolving requests.

3. At all relevant times, hereto, DRPI has engaged and/or made every effort to engage in proactive dialogue with the Department regarding operation of the DRPI Landfill, addressing topics including cover, stormwater management, capping and, notably an evolving contaminated stormwater policy. Stated another way: i) DNREC imposed cover approval requirements that miscalculate the coverage area, and without consideration of the time constraints associated with DRPI receiving the actual approval from DNREC, and then being tasked in short order with finding available fill; ii) DNREC advanced a theory, unsupported in law and fact, deeming stormwater as being contaminated by allegedly coming into contact with landfill waste as a result of the alleged cover problems; and iii) imposed stormwater discharge requirements for the water deemed "contaminated".

4. Aside from the legal and factual deficiencies and inconsistencies associated with DNREC's application of its various programs, DRPI's frustration regarding its dialogue with the Department has been the inability to achieve and/or formalize clear, consistent, communication with DNREC. Many of the alleged violations underlying the Order and presumably driving the issuance of the Modified Permit, were never reduced to a citation or other indication that DNREC

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<sup>1</sup> The Delaware Solid Waste Authority (DSWA), a public instrumentality, operates three other landfills across the State.

for major modifications. The Modified Permit introduces significant new obligations—including increased daily cover requirements, more stringent stormwater handling requirements, increased monitoring frequencies and analytes, increased notice requirements, and an unconstitutionally vague noise standard—that significantly change DRPI’s operational and compliance obligations. The Modified Permit is unsupported by the evidence, contrary to law, and constitutes an abuse of DNREC’s permitting authority. Further, if the Order is upheld, DRPI will be forced to immediately comply with the onerous provisions of the Modified Permit in a manner conflicting and inconsistent with provisions of the Order itself. Finally, the Order, which imposes requirements upon DRPI regarding the Modified Permit, expressly acknowledges that DRPI’s legal rights are affected. (Order at 93.)

## **II. The Decision is Improper**

10. Pursuant to 7 Del. Admin. C. §§ 105-2.1.2 and 2.1.3, the Modified Permit is improper.

11. For the reasons set forth herein, the Modified Permit is unsupported by the evidence, is contrary to law and fact, is arbitrary and capricious and is an abuse of discretion. *See Delaware Solid Waste Auth. v. Delaware Dep’t of Nat. Res. & Env’t Control*, 250 A.3d 94, 118 (Del. 2021) (“Under 7 Del. C. § 6008, the Board reviews Agency decisions to determine whether they are supported by the evidence, free of legal error, and do not abuse discretion.”).

## **III. Reasons Why the Decision is Improper**

12. As set forth herein, the Modified Permit is improper, not supported by substantial evidence, is contrary to law and fact, is arbitrary and capricious and constitutes an abuse of discretion for several reasons. Except as specifically stated herein, DRPI does not admit any of the allegations or legal conclusions set forth in the Modified Permit. The absence of a specific

18. Under the terms of the Modified Permit, DRPI will be required to source almost three times more cover than was required under the Permit. As described in more detail in the Order Appeal, DNREC is requiring DRPI to obtain the Department's approval for clean fill sources. That mandate has resulted in DRPI waiting between 35 days and 139 days for the Landfill to obtain source approval from DNREC. The volume of approved fill material associated with this modification is expected to escalate from 2200 tons a week to 6600 tons a week. This requirement, without an opportunity to be heard, is unsupported by the evidence, and constitutes an error of law and an abuse of discretion.

19. Another significant change can be found in Condition II.D., requiring 90-day advance notice to DNREC prior to commencing each of phase of capping construction. This requirement will significantly delay construction at the Landfill. By example, on May 6, 2026, DRPI submitted a minor request to modify the channel in the Phase 1 capping project to address DNREC's concern regarding rills. DRPI is currently prepared to begin this project; however, approval may now take up to 90 days. It should be noted that DNREC is still reviewing the original Phase 1 project, submitted by DRPI to DNREC in 2024. Comments are expected from that ongoing review by DNREC. This change underscores continuing issues faced by DRPI in addressing DNREC's concerns timely, as more fully addressed in the Order Appeal.

20. A significant change can also be found in Condition IV.C.2. The Modified Permit increases the frequency of sampling outfalls from semi-annual to monthly. In addition, the list of required parameters and reporting requirements is being expanded. The Cost of this increased frequency is expected to increase ten-fold, not including the cost of the additional parameters.

21. The Permit Modification now facing DRPI is major in nature and scope. The Permit that is the subject of the modification was issued and went into effect on May 25, 2022, and was

contact-only trigger thus lacks an evidentiary basis: DNREC cannot point to any data demonstrating that short-duration stormwater contact with flagged or windblown debris on a landfill surface meets the DRGSW definition of leachate.

26. The Modified Permit's contact-only definition would also produce impossible results if applied as written. Every stormwater inlet in Delaware that has debris on its grate or within the contributing flow path would need to be plugged and its runoff managed as leachate. Curbside waste set out for collection on rainy days would similarly generate "contaminated surface water" requiring segregation and treatment. The Modified Permit's definition exceeds the regulatory framework and constitutes an error of law and fact.

*c. The new condition governing noise is unconstitutionally vague.*

27. A statute or regulation can be void for vagueness in two different ways: First, "[a] statute is void for vagueness if 'it fails to give a person of ordinary intelligence fair notice that his contemplated behavior is forbidden by the statute . . .'" *Wien v. State*, 882 A.2d 183, 187 (Del. 2005) (quoting *State v. Baker*, 720 A.2d 1139, 1147-48 (Del.1998)). Under this type of lack-of-notice vagueness claim, the claimant must show that the statute or rule "either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application[.]" *Crissman v. Del. Harness Racing Comm'n*, 791 A.2d 745, 747(Del. 2002) (internal quotation omitted). A statute or regulation can also be void for vagueness if "it encourages arbitrary or erratic enforcement." *Wein*, 882 A.2d at 187 (quotation omitted).

28. New Condition III.V. ("Noise") compels DRPI to "operate the solid-waste facility in a manner to prevent noise generated from the solid-waste facility from interfering with any person's enjoyment of life or property." (Modified Permit at 25.)

32. As another example, the Order gives DRPI 90 days to establish temporary vegetation on external slopes and certain areas that have received intermediate cover (Order at 89), but the Modified Permit immediately requires that “[l]ong-term intermediate cover (cover exposed for greater than 30 days) used on the sub-cells prior to final capping . . . be stabilized with vegetation or other erosion control material approved by the Department.” (Modified Permit at 37.)

33. Similarly, the Order allows the discharge of contaminated stormwater to the leachate collection system, in compliance with the October 30, 2025 NPDES Temporary Discharge Authorization (“TDA”) until April 30, 2026. (Order at 85.) The Modified Permit, however, contains an absolute diversion mandate to the leachate-collection system with no apparent ability to apply for a secondary TDA. (Modified Permit at 20.)

34. The Modified Permit cannot be simultaneously valid and enforceable upon receipt while the Order grants DRPI 30, 60, and 90 days to achieve overlapping conditions. This internal inconsistency renders the Modified Permit’s immediate compliance mandate an error of law, arbitrary, capricious, unreasonable, and an abuse of discretion.

**RESERVATION OF RIGHTS, COUNSEL, AND ESTIMATED WITNESS  
NUMBER AND TIME INVOLVED**

35. DRPI reserves the right to assert additional grounds for appeal and reserves the right to amend this Statement of Appeal. Notably, DRPI was afforded only twenty (20) days under applicable rules and regulations in which to file this Appeal. This timeframe is insufficient to fully evaluate the 71-page Modified Permit and the related 98-page Order and its impact on the Modified Permit. Both documents involve several substantive factual and legal issues. Therefore, DRPI may be required to supplement this Appeal in advance of the Hearing.

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Respectfully submitted,

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